

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs April 30, 2008

**STATE OF TENNESSEE v. KIMBERLY LOUISE VINEYARD**

**Direct Appeal from the Circuit Court for Blount County**  
**Nos. C-16385 - 86, 16488, 16507 - 11      Michael H. Meares, Judge**

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**No. E2007-01707-CCA-R3-CD - Filed January 6, 2009**

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Following a guilty plea on April 2, 2007 to five counts of prescription fraud, two counts of forgery, and one count of theft of property, Defendant was sentenced to four years to serve at 30 percent, with 30 days of service incarcerated, and the balance of the sentence to be served on supervised probation. A probation violation warrant was issued on May 30, 2007 after Defendant was arrested for domestic assault on May 28, 2007. The trial court revoked Defendant's probation on July 9, 2007, and ordered her to serve the remainder of her sentence incarcerated. On appeal, Defendant argues that the trial court erred in revoking her probation. After a thorough review of the record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Circuit Court Affirmed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

J. Liddell Kirk, Knoxville, Tennessee, (on appeal); Mack Garner, District Public Defender, Maryville, Tennessee, (at trial), for the appellant, Kimberly Louise Vineyard.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; Mike Flynn, District Attorney General; and Kathy Aslinger, Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

**I. Background**

Carolyn Brewer of the Board of Probation and Parole testified for the State. Ms. Brewer testified that Defendant called and made an appointment with her after Defendant's release from jail. Ms. Brewer had met with Defendant twice before Defendant was arrested on the domestic assault charge. At the first meeting, Ms. Brewer and Defendant reviewed the rules of probation. Ms. Brewer testified that she felt Defendant understood the rules of probation, which included refraining from committing any new offenses. Defendant did report this arrest to Ms. Brewer as required by

the probation rules. Ms. Brewer subsequently filed the instant violation of probation warrant on May 30, 2007, and Defendant pled guilty to the domestic assault charge on May 31, 2007. On cross-examination, Ms. Brewer stated that Defendant had done everything Ms. Brewer had asked of her up until the time of the new charges.

Defendant testified that at the time she committed the original crimes she had a substance abuse problem and was supporting her habit. As to the domestic assault charge, Defendant testified that she found out a good friend had overdosed and she “flipped out.” Defendant stated she “would never raise my hand to my mother. But she said I looked at her crazy and it scared her.” Defendant’s mother called the police and Defendant was arrested and went to jail for the night. On May 31, 2007, Defendant spoke with the Assistant District Attorney (A.D.A.) and agreed to plead guilty to the domestic assault in exchange for a sentence of eleven months, twenty-nine days served on probation, enroll in a women and violence class, and to resume her medication for her bipolar disorder. Defendant did not consult an attorney about this plea agreement. Defendant stated that she had a place to live (with her parents) and that she would attend the counseling sessions, start taking her medication again, and comply with all the rules of probation. Defendant also testified that she knew she “was wrong.”

On cross-examination, Defendant admitted she understood that one of the rules of probation was to not commit any new crimes. Defendant stated that she did not inform the A.D.A. that she was already serving time on probation when they were discussing the new case. Defendant admitted she had violated the rules of Drug Court and Community Corrections on previous occasions. She also admitted to having a lengthy criminal history and being familiar with the criminal justice system.

The trial court determined that based on the evidence presented at the hearing, Defendant had violated the terms of her probation. As a result, the trial court revoked her probation and ordered her to serve the balance of her sentence incarcerated.

## **II. Analysis**

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006); Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. Id. (citing State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when “the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such

suspension.” Id. § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. See State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Having considered Defendant’s arguments, we are unpersuaded that the trial court abused its discretion. Defendant admitted that she understood the rules of probation, that she pled guilty to committing another crime while on probation, and that she “was wrong.” The trial court was well within its authority to determine that Defendant had violated her probation and to order her to serve the remainder of her sentence incarcerated. Accordingly, Defendant is not entitled to relief.

### **CONCLUSION**

For the foregoing reasons, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE